

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ASTELLAS INSTITUTE FOR REGENERATIVE
MEDICINE, and STEM CELL & REGENERATIVE
MEDICINE INTERNATIONAL, INC.,

Plaintiffs,

v.

IMSTEM BIOTECHNOLOGY, INC., XIAOFANG
WANG, and REN-HE XU,

Defendants.

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) C.A. NO. 1:17-cv-12239-ADB
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**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE REPLY IN SUPPORT
OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND TO FILE UNDER SEAL**

Pursuant to L.R. 7.1(b)(3), 7.2, 56.1, and the Protective Order (Dkt. No. 55), Defendants ImStem Biotechnology, Inc., Xiaofang Wang, and Ren-He Xu (collectively, "Defendants") respectfully request that the Court grant them leave to file: (1) a reply brief of no more than 10 pages in further support of their motion for partial summary judgment;¹ (2) a response to Plaintiffs' Supplemental Statement of Materials Facts; and (3) a declaration related such materials (with accompanying exhibits). If such leave is granted, Defendants would file these documents by January 17, 2020 (consistent with the Court's Amended Scheduling Order). Defendants also respectfully request leave to file the aforementioned materials under seal. Counsel for Plaintiffs have indicated that they do not oppose the relief sought herein.

In support of their motion, Defendants state as follows:

1. On December 19, 2019, Defendants filed a Motion for Partial Summary Judgment

¹ The Amended Scheduling Order (Dkt. No. 106) originally set a five page limit for dispositive motion reply briefs (which could only be submitted with leave of Court), but the Court increased the page limit to 10 pages on December 18, 2019. (Dkt. No. 124).

(Dkt. No. 131), along with a memorandum in support, a statement of undisputed material facts, and a supporting declaration.²

2. On January 10, 2020, Plaintiffs' filed their opposition to Defendants' Motion for Partial Summary Judgment, along with a declaration (and attached exhibits), and a response to Defendants' Statement of Material Facts, which also included a Supplemental Statement of Material Facts. (Dkt. Nos. 142-44).³

3. Defendants seek leave to file a reply brief, of up to 10 pages, in order to address various new arguments made and case law cited in Plaintiffs' opposition, such as that Plaintiffs' state law claims accrued after the statute of limitations periods began and that their contract claim raises genuine issues of material fact. Defendants also wish to respond to Plaintiffs' Supplemental Statement of Material Facts. Defendants believe that a reply brief and the aforementioned associated materials will materially assist the Court in focusing on the correct legal arguments and the small number of undisputed material facts that warrant granting Defendants' motion for partial summary judgment.

4. Under the Protective Order, the parties may designate certain information as "Confidential" or "Highly Confidential," which means it cannot be disclosed without a court order. (Dkt. No. 55 at § V.B). Because the proposed reply papers may include and discuss material that the Court previously ordered filed under seal, Defendants request leave to file such materials under seal. In addition, Defendants may also file excerpts of expert and fact depositions, excerpts of expert reports, discovery responses, and/or internal emails – all of which

² Defendants filed corrected sealed versions of their brief, statement of material facts, and supporting declaration on December 20, 2019. Defendants filed redacted versions of these materials on the docket on January 2, 2020. (Dkt. No. 135-37).

³ Plaintiffs also filed sealed versions of these materials.

have been designated as “Confidential” or “Highly Confidential” under the Protective Order.

Should they decide to do so, Defendants request leave to file such materials under seal as well.

5. Pursuant to L.R. 7.2(a), Defendants believe the aforementioned materials can and should be de-designated and published immediately but, for purposes of timely filing their reply papers, request that they be filed now under seal. *Cf.* (Dkt. 55 at §3(b) (burden is on designating party)).

6. Defendants likewise request leave to file publicly redacted versions the aforementioned materials, redacting “Confidential” and “Highly Confidential” information.

WHEREFORE, Defendants respectfully request the Court grant their Unopposed Motion for Leave to File a Reply In Support of Their Motion for Partial Summary Judgment and to File Under Seal.

Dated: January 14, 2020

Respectfully submitted,

IMSTEM BIOTECHNOLOGY, INC., REN-
HE XU and XIAOFANG WANG,

By their Attorneys,

/s/ Timothy R. Shannon
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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I hereby certify that, on January 14, 2020, counsel for Defendants conferred by email with Counsel for Plaintiffs in a good faith effort to narrow or resolve the issues raised in the instant motion. Counsel for Plaintiffs indicated they do not oppose the relief sought by the instant motion.

Dated: January 14, 2020

/s/ Timothy R. Shannon

Timothy R. Shannon

CERTIFICATE OF SERVICE

I hereby certify that I caused this document to be filed through the CM/ECF system, to be sent electronically to the registered participants, and paper copies to be sent to those indicated as nonregistered participants on the date below.

Dated: January 14, 2020

/s/ Timothy R. Shannon

Timothy R. Shannon